No. 83-1472

IN THE

Supreme Court of the United States

OCTOBER TERM, 1983

NORTH CAROLINA ex rel. CHARLES E. HORNE, Individually, and on behalf of all others similarly situated, for the benefit of the City of Charlotte and the County of Mecklenburg, North Carolina,

Appellant,

v.

BETTY CHAFIN, HARVEY GANTT, MILTON SHORT, PAT LOCKE, DON CARROLL, CHARLES DANELLY, RON LEEPER, DR. LAURA FRECH, MINETTE TROSCH, GEORGE SELDEN, THOMAS COX, JR., Individually, and as Members of the Charlotte City Council, KENNETH R. HARRIS, Individually, and as Mayor of the City of Charlotte, EDWIN H. PEACOCK, ANN THOMAS, ELISABETH HAIR, W. THOMAS RAY, Individually, and as Members of the Board of County Commissioners of the County of Mecklenburg, and THE CHARLOTTE CHAMBER OF COMMERCE, a corporation,

Appellees,

ON APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA

MOTION OF APPELLEES TO DISMISS OR AFFIRM

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MOTION

The appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Supreme Court of North Carolina on the ground that it is manifest that the questions upon which the decision of this cause depends are so unsubstantial as not to need further argument.

I.

STATEMENT OF RELEVANT FACTS AND STATEMENT OF QUESTIONS PRESENTED

The County of Mecklenburg and the City of Charlotte each paid one-third ($2,603.15) of the cost of a reception which honored the 1979 North Carolina General Assembly, the Mecklenburg County Delegation to the 1979 General Assembly,

and 1979 State Senate President Pro Tem W. Craig Lawing. The remaining one-third of the reception cost was paid with private funds from the Charlotte Chamber of Commerce.

The motion to dismiss should be granted as to The Charlotte Chamber of Commerce because the Chamber is a private, voluntary entity; and its contribution of one-third of the cost of the legislative reception lacks forced association elements and lacks public money. Indeed, the Jurisdictional Statement omits all contentions with respect to this appellee.

The remainder of this motion pertains to all other appellees, who were members of the Charlotte City Council, the Mayor of the City of Charlotte, and members of the Board of County

Commissioners of Mecklenburg County at the time of the legislative reception.

The ultimate purpose of the reception was to enhance the attainment of the legislative goals of the Board of County Commissioners and the City Council as set forth in their published legislative programs. Most of the goals involved increasing state participation in existing social programs. The reception bore no relationship to the election of any candidate, to any referendum, to any political party, or to any attempt to influence citizens and voters. Lesser levels of state government sought the favor of the highest level of state government with respect to matters which directly affected the lesser levels but which were controlled by the highest level.

The Supreme Court of North Carolina has ruled that a North Carolina statute permits a majority of an elected county commission or a majority of an elected city council to use public money from the respective county or city treasury for the purpose of lobbying the elected members of the North Carolina General Assembly with respect to proposed state legislation, which would directly affect such county or city. Two questions are produced. First, did such limited lobbying with public funds by a local legislature of the state legislature curtail any of a taxpayer's First Amendment rights? Second, if so, is such minimal curtailment permitted because the lobbying and concomitant expenditure of public money were germane to the duties, responsibilities and obligations of the local legislators?

II.

ARGUMENT IN FAVOR OF GOVERNMENTAL APPELLEES' MOTION TO DISMISS: THE FEDERAL QUESTION EITHER IS NONEXISTENT OR IS UNSUBSTANTIAL

The appellant contends that the use of public money to seek or oppose legislation before the North Carolina General Assembly forces him to support financially the propagation of views with which he disagrees. Since Mr. Horne must support the public treasury with his taxes, he contends that he is being forced to "associate" with views repugnant to his own.

The appellant's argument overlooks the fact that our constitutional system of representative government and of majority rule negates any First Amendment right by a taxpayer to disassociate

himself financially from the decisions of his elected representatives that are within the scope of the constitutional and statutory duties which these individuals were elected to exercise. Such decisions of our elected officials represent the will of the majority that elected them. Accordingly, all citizens must abide by such decisions, including those calling for payment of taxes and the expenditure of public money, whether they agree with them or not. The decision by the appellees to appropriate funds to promote the 1979 legislative agenda was germane to the core governmental functions which the appellees were to administer; and the appellant is required to support that decision through payment of any taxes levied by law.

The freedom of speech and belief guaranteed by the First Amendment does not give citizens the option to cease payment of taxes simply because they disagree with expenditures made by their elected representatives pursuant to their constitutional and statutory duties. If such were the case, our elected representatives would be unable to govern. Rather, the First Amendment gives citizens the right to disagree publicly and privately with the decisions of their elected representatives and to vote such representatives out of office at the ballot box if there is widespread dissatisfaction.

The "forced association" issue raised by Mr. Horne results from a fundamental misunderstanding of Abood v. Detroit Board of Education, 431 U.S. 209

(1977). Abood held that a non-union public employee could be compelled to finance collective bargaining activities but could not be compelled consistent with the First Amendment to support financially the advancement of ideological causes and other activities and decisions of the collective bargaining unit which were not "germane to its duties as collective-bargaining representative." (431 U.S. at 235). Justice Powell put his finger squarely upon the distinction between Mr. Abood and Mr. Horne in footnote 13 of the three Justice "concurring in judgment" opinion in Abood:

> Compelled support of a private association is fundamentally different from compelled support of government. Clearly, a local school board does not need to demonstrate a compelling state interest every time

> it spends a taxpayer's money in ways the taxpayer finds abhorrent. But the reason for permitting the Government to compel the payment of taxes and to spend money on controversial subjects is that the Government is representative of the people. The same cannot be said of a union, which is representative only of one segment of the population, with certain common interests. The withholding of financial support [to a union] is fully protected as speech in this context. (431 U.S. at 259).

Taken to its logical conclusion, Mr. Horne's contention would require the individual County Commissioners and City Council members to communicate with the North Carolina General Assembly upon legitimate public business with their own private funds for postage stamps, long distance telephone calls, and stenographic assistance; and even such expenditures might be questionable if the private funds so spent were derived from governmental salaries.

The Jurisdictional Statement cites West Virginia State Board of Education v. Barnette, 319 U.S. 624 (1943), and Wooley v. Maynard, 430 U.S. 705 (1977). We fail to see the relevance of either case. In West Virginia State Board, public school children were required to pledge allegiance to the United States and salute the flag or be expelled from school; moreover, such expulsions were unlawful absences for which parents and guardians incurred criminal liability. Wooley required individuals to display the New Hampshire motto on their private motor vehicle license plates even though the motto was repugnant to the moral and religious beliefs of some persons. The school children and their parents in West

Virginia and Mr. Maynard in New Hampshire had First Amendment rights to remain silent. Mr. Horne, however, lacks a similar right to declare himself immune from the portion of local taxes that is used to seek and to oppose legislation with which he disagrees. Mr. Horne goes beyond an effort to recover his own taxes; he seeks to prohibit any financial support from any local taxpayer for the lobbying effort.

The appellant's First Amendment claim is a mirage. The governmental appellees' motion to dismiss the appeal should be granted.

III.

ARGUMENT IN SUPPORT OF GOVERNMENTAL APPELLEES' MOTION TO AFFIRM: THE EXPENDITURES OF PUBLIC MONEY WERE GERMANE TO THE GOVERNMENTAL APPELLEES' CONSTITUTIONAL AND STATUTORY DUTIES AS ELECTED OFFICIALS

If we ignore Justice Powell's footnote in Abood, supra, if we equate Mecklenburg County and the City of Charlotte with a labor union, and if we treat Mr. Horne as a non-labor union member who is required to make certain payments equivalent to initiation fees and union dues, the Abood, supra, decision nevertheless requires affirmance of the decision below.

The Abood Court said:

> To compel employees financially to support their collective-bargaining representative has an impact upon their First Amendment interests. An employee may very well have ideological objections to a wide variety of activities undertaken by the union in its role as exclusive representative. His moral or religious views about the desirability of abortion may not square with the union's policy in negotiating a medical benefits plan. One individual might disagree with a union policy of negotiating limits on

the right to strike, believing that to be the road to serfdom for the working class, while another might have economic or political objections to unionism itself. An employee might object to the union's wage policy because it violates guidelines designed to limit inflation, or might object to the union's seeking a clause in the collective-bargaining agreement proscribing racial discrimination. The examples could be multiplied. To be required to help finance the union as a collective-bargaining agent might well be thought, therefore, to interfere in some way with an employee's freedom to associate for the advancement of ideas, or to refrain from doing so, as he sees fit. But the judgment clearly made in Hanson and Street is that such interference as exists is constitutionally justified by the legislative assessment of the important contribution of the union shop to the system of labor relations established by Congress. 'The furtherance of the common cause leaves some leeway for the leadership of the group. As long as they act to promote the cause which justified bringing the group together, the individual cannot withdraw his financial support merely because he disagrees with the group's strategy.' (citation omitted) (431 U.S. at 222-223).

The Abood Court held that the First Amendment prohibited compelled financial support for the advancement of ideological causes and other activities and decisions of the collective bargaining unit, which were not germane to its duties as collective bargaining representative. The Court noted th. there would be "difficult problems in drawing lines between collective bargaining activities for which contributions may be compelled, and ideological activities unrelated to collective bargaining for which such compulsion is prohibited." (431 U.S. at 236).

Abood is a public employment case; Mr. Horne has brought a citizenship case. Even if the two cases involve the same constitutional principles, the appellant

must do more than simply state that he disagreed with the legislative changes sought by the governmental appellees through their lobbying activity with the North Carolina General Assembly. Mr. Horne must specifically allege and prove that the legislative changes were not germane to the legislative obligations and duties of the appellees. No such allegations have been made. Common sense alone leads one to conclude that the quest for greater state participation in various existing social programs is well within the range of decisions that the appellees were elected to make and, hence, did not touch impermissibly upon the First Amendment rights of any person. The forced association of which Mr. Horne complains - payment of taxes to a government whose policies and expenditures the

taxpayer opposes - is constitutionally required.

We are unable to see how the North Carolina state court decision below has any effect upon the federal legislation and the federal regulations mentioned in the Jurisdictional Statement. Affirmance of the decision below will establish only that the North Carolina Legislature may authorize counties and cities in North Carolina to spend public funds to seek and to oppose state legislation that directly affects such counties and cities.

The governmental appellees' alternative motion to affirm the judgment below should be allowed.

IV.

CONCLUSION

The appellees move that the appeal be dismissed as to each of them. Alter-

natively, the appellees move that the judgment of the Supreme Court of North Carolina should be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that two (2) copies of the foregoing and attached MOTION OF APPELLEES TO DISMISS OR AFFIRM have been duly served upon the appellant and upon the Attorney General of North Carolina pursuant to U.S. Sup. Ct. Rule 28.5(b) by depositing the same in an United States mailbox, with first class postage prepaid, addressed to counsel of record for the appellant and to the Attorney General of North Carolina, as follows:

Edwin Vieira, Jr.
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Manassas, Virginia 22110

Hon. Rufus Edmisten
Attorney General of North Carolina
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This 26th day of March, 1984.

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